

2003-04

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Supreme Court Clerk
PO Box 30052
Lansing, Michigan 48909

Re: ADM File No. 2003-04

Dear Sir:

I join in the response of the Criminal Defense Attorneys of Michigan. I am also writing to comment on Rule 6.110(D) which provides:

Exclusionary Rules. Objections to evidence on the ground that it was acquired by unlawful means are not properly made at the preliminary examination.

In Potentially Dispositive Pretrial Motions by Hon. Dennis Kolenda, p. 2, he writes:

There is a most interesting and potentially useful observation in Grano, "Implementing the Objectives of Procedural Reform: the Proposed Michigan Rules of Criminal Procedure -- Part I, " 32 Wayne L Rev 1007, 1037-1038 (1986). Professor Grano was the reporter for the committee which drafted what became the Michigan Rules of Criminal Procedure (MCR 6.001 et set). In the first of the two articles explaining the committee's proposals, Professor Grano observes that "the preliminary examination would not serve its screening function effectively if it evaluated the existence of probable cause under an arrest standard...More can be said for a probable cause standard that evaluates whether a defendant is probably guilty...To eliminate the burdens resulting from unproductive trials, the preliminary examination should provide some indication whether the prosecutor will be able to convict a defendant. "

While those comments deal directly with the probable cause standard, Professor Grano raised an important function of the preliminary examination and that is to screen out cases that should not burden the court system. Further,

preliminary examinations, as they are presently structured, provide immediate redress for individuals whose constitutional rights have been violated. It is important that a legal system have the faith of the people and that will only happen if the people believe they are being treated fairly. The people must know that there are proper safeguards in place to protect their constitutional rights at every stage of the legal process and the use of the exclusionary rule at the preliminary examination provides that safeguard.

I would ask for an additional 30 days to respond to ADM File No. 2003-04.

Thank you.

Sincerely,

Susan K. Rock